

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**

In the Matter of

Application of SBC Communications Inc.,)	
Michigan Bell Telephone Company, and)	WC Docket No. 03-16
Southwestern Bell Communications)	
Services, Inc. for Provision of In-Region,)	
InterLATA Services in Michigan)	
)	
)	

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February 6, 2002

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COMMENTS OF AT&T CORP.

Pursuant to the Commission's Public Notice, AT&T Corp. ("AT&T") respectfully submits these comments in opposition to the application of SBC Communications, Inc., ("SBC"), Michigan Bell Telephone Company ("Pacific"), and Southwestern Bell Communications Services, Inc. ("SBCS"), for authorization to provide in-region, interLATA services in Michigan.

INTRODUCTION AND SUMMARY

AT&T applauds the Michigan Public Service Commission ("Michigan PSC") for its exceptional efforts in creating conditions that have permitted local competition to emerge in Michigan. The key to the progress made so far has been pricing. The Michigan PSC has established cost-based prices for access to SBC's critical unbundled network elements. As a result, AT&T and other CLECs have been able to offer Michigan consumers a true alternative to the bloated fees for local service that Michigan Bell has long imposed.

Michigan consumers, in turn, have reaped enormous benefits. Since February 2002, when AT&T first entered the local market in Michigan, AT&T and SBC customers alike have

saved over tens of millions of dollars already on local service. All Michigan consumers have benefited – even those consumers who have not switched away from SBC -- because local competition from AT&T and other CLECs has compelled SBC to lower its prices as well.

In one important respect, then, Michigan is a success story: it illustrates the enormous benefits that flow to consumers when state regulators faithfully enforce the UNE-pricing requirements of the Telecommunications Act of 1996 (the “Act”). By demonstrating the pivotal competitive importance of setting truly cost-based rates, Michigan stands as a model for other states to follow, and for this Commission to support.

Nevertheless, the inescapable fact is that there would be far greater local competition today if SBC were providing competitors with nondiscriminatory access to its operations support systems. It is not that SBC has denied CLECs all access to its OSS. But having lost the battle to block the setting of cost-based UNE rates, SBC has been in no hurry to remove the remaining key obstacle to effective local competition. By denying CLECs nondiscriminatory access to its OSS, SBC continues to force each CLEC to compete, in effect, with one hand tied behind its back.

The resulting contrast between SBC’s competitive position and that of CLECs is stark. Insofar as OSS are concerned, SBC competes effortlessly in its local market, because SBC built and manages the OSS it needs to provide local service, and plans and implements OSS changes as suits those needs. SBC therefore enjoys seamless and reliable access to the systems-support that is essential to order, provision, maintain, and bill for local service for customers.

In contrast, competitors in Michigan are wholly – and necessarily – dependent upon SBC to provide them with comparable access to this same support system. SBC has yet to do so. Its system-outages, mishandled-orders, refusal to abide by the change management process, and

inadequate technical support are textbook examples of how an incumbent LEC can exploit its control over OSS to delay and deter competition and raise its rivals' costs. As a result, the extent of competition in Michigan today is less robust – and the future of local competition less secure – than if SBC had fully implemented its OSS obligations. AT&T therefore urges this Commission not to grant SBC's Michigan application until SBC takes the remaining and essential steps to place its local competitors on an equal OSS-footing with SBC.

Part I of these comments describes the critical ways in which SBC has failed to meet its obligation to provide competitors with non-discriminatory access to its OSS. SBC's inadequate OSS have plagued AT&T's market entry from the outset to the present day. In the weeks preceding this application, SBC's flawed systems were erroneously rejecting tens of thousands of AT&T orders, delaying the issuance of thousands more "line loss" notifications needed to prepare accurate bills, and preventing AT&T's customer representatives for hours on end from accessing the customer information needed to fill orders. The anticompetitive consequences of such discriminatory performance are stark. They include greater numbers of cancelled orders and lost customers, higher customer care costs, and harm to AT&T's business reputation, all of which has compromised AT&T's efforts to compete in Michigan.

The SBC systems-errors that caused these problems are not one-time only problems that need a one-time only fix. They are recurring problems that reflect, in part, SBC's failure to overcome years of neglect of the underlying and inadequate legacy Ameritech systems. SBC has vastly compounded these problems, however, by failing to abide by sound change management procedures, and by deliberately and unreasonably imposing a unique versioning limitation that precludes CLECs from collaborating with a third party to place orders, which thus creates a huge obstacle to line-splitting and other partnering arrangements. Such decisions show that SBC is

not simply the hapless victim of inherited and flawed support systems. They show instead that SBC is engaging in what amounts to “strategic incompetence” in the management of its systems and interfaces. By refusing to adhere to essential change management policies and by denying CLECs critical resources, SBC has chosen not to fully implement its duty to provide CLECs with nondiscriminatory access to OSS.

SBC has therefore failed to demonstrate that CLECs today have access comparable to what SBC enjoys. Until SBC demonstrates, for a reasonably sustained period of time (including, for example, through the upcoming deployment of new versions of the EDI interface) that it can provide CLECs with reliable and consistent access to its OSS, its bid for Section 271 approval should be denied.

Part II describes a second reason for rejecting SBC’s application. SBC relies heavily on performance measure reports as evidence that it is providing competitors with nondiscriminatory access. That reliance, however, is misplaced. The evidence is overwhelming – and the Michigan PSC has found – that SBC has not yet established that its performance reporting process generates accurate, reliable, or complete data. Given that record, SBC’s 271 application is obviously premature.

First, SBC cannot rely on its performance data to demonstrate that it has provided nondiscriminatory access to its OSS. That is because many of the critical aspects of its deficient performance are not reflected in the performance measure data. For example, SBC has caused numerous competition-affecting errors in recent months, including erroneous error rejections, failure to send readable line loss notices, and failure to send billing completion notices. But because the metrics are either not designed to cover these defects or because AT&T has been forced to supplement its orders (and thus forgo penalties associated with SBC’s failure to meet

its metrics), these acknowledged SBC errors, which have affected over 50,000 AT&T orders, are wholly invisible to SBC's performance measure reporting. Indeed, AT&T has calculated that in the last three months of 2000, had Ameritech's late FOCs and missed due dates been captured in the performance data, it would owe AT&T over \$10 million in penalties.

The performance reports that SBC has submitted are not a reliable guide to its performance for a second, equally fundamental reason. SBC has not shown that its systems for capturing and reporting performance data yield accurate, reliable data that fairly present its performance for any given measurement. To the contrary, all of the evidence – including the findings to date of the independent test manager – shows that SBC's data cannot be considered accurate or reliable. That was the express finding of the Michigan PSC, which recently stated that it “cannot conclude that SBC's performance metric reporting process has fully achieved a level of stability and dependability that will be required in the post-Section 271 environment to permit continued monitoring and assurances against discriminatory behavior.”

This Commission has never approved a section 271 application in the face of such a finding by a state commission. Nor has the Commission ever approved a section 271 application where, as here, independent third-party evaluations of the integrity of the BOC's data are ongoing and already reveal serious and unresolved problems of data integrity, or where the BOC's own track record of data restatements – 292 changes to data reported for 247 measures in December 2002 alone – itself suffices to demonstrate the unreliability of the BOC's data-reporting process. In short, SBC's unverified, unreproducible, and unreliable performance reports not only fail to salvage SBC's claim of full checklist compliance, they preclude acceptance of it.

Part III explains why SBC has failed to demonstrate that it provides access to the network elements needed to provision line-splitting. First, it has not demonstrated that it has the OSS in place to support line splitting, particularly for voice CLECs such as AT&T that wish to partner with third party data CLECs to provide line splitting. In addition, SBC's processes effectively preclude a CLEC from continuing to provide voice service via UNE-P for a former line-splitting customer who discontinues DSL service. SBC's processes impose a voice-service outage of up to seven days in order to re-establish UNE-P service for that customer without running the customer's loop through the CLEC's collocation cage. This obviously unacceptable "alternative" leaves CLECs no choice but to keep the now-pointless collocation arrangement in place for that customer, thereby tying up a valuable port to no purpose, and raising the CLEC's costs. SBC's process is discriminatory. Its handling of line-sharing customers that drop their third-party DSL provider shows that SBC can undo a collocation arrangement with no appreciable loss of voice service to the customer. And there is no evidence that when SBC loses a DSL customer, it continues indefinitely to tie up the port formerly assigned to that customer.

Finally, Part IV explains why it would not be in the public interest to grant SBC's application before it corrects these basic problems. SBC's principal public interest claim is that granting its application will "stimulate" local competition in Michigan. SBC has it exactly backwards. CLECs entered the local service market long before 271 authorization was remotely imminent. They are competing as vigorously as possible, but continue to face the significant obstacles described above in attempting to compete with SBC. To remove the incentive of achieving 271 authorization now, before those problems are fixed, would serve only to stifle, not stimulate, local competition.

Common sense thus rebuts SBC's central thesis, and the Texas experience confirms that rebuttal. While SBC, by its own admission, signed up 2.1 million customers in the first 9 months after 271 approval (Br. 92), and now estimates that it has close to 40 percent of the long distance market,¹ CLEC entry into the local market has stalled at a fraction of SBC's share, reflecting the presence of continuing and substantial obstacles to effective local competition that SBC has shown it has no intention of removing. SBC's rapid long-distance market share gain is not unique to Texas. Judging from SBC's own estimates, SBC has gained nearly the same percentage of long distance market share in its first four weeks of entry in California (and over twice as many customers) as AT&T gained in Michigan's local market in its first four months.²

That startlingly fast pace of entry would be impossible but for one fact – there is no “systems” work – whatsoever – that any long distance competitor needs to do to permit SBC to compete. From a systems perspective, SBC controls its long-distance destiny. It can sign up as many customers as it wants, as quickly as it can acquire them.

That is how it should be, and SBC's time in Michigan will come – but not before SBC provides CLECs comparable competitive freedom in SBC's local market. The implications for the public interest are clear -- this is the last, best chance to create the conditions for sustainable and vibrant local competition in Michigan. Until SBC is compelled to remove the remaining, formidable obstacles to full and effective local competition, the door to long distance authorization in Michigan should remain closed.

Finally, it is not appropriate to rely solely on the commitment of the Michigan PSC to bring SBC into compliance in the future. The principal tools that the Michigan PSC must rely

¹ SBC Investors' Update, 4th Quarter 2002, at page 14 (attached hereto as Exhibit 1).

² See *id.* (estimating a 2.5% long distance share in California after 19 business days).

upon – SBC’s performance reports – are not yet up to the task, as the Michigan PSC itself has expressly found. Indeed, they do not capture the very defects that serve today to defeat full-fledged CLEC entry, and they do not accurately measure those aspects of performance that they do purport to measure. This Commission should therefore exercise its statutory power to require SBC to take the steps needed to fully implement its market-opening obligations and ensure that SBC’s eventual long-distance authorization Michigan will, in fact, serve the public interest.

I. SBC DISCRIMINATES AGAINST ITS COMPETITORS WITH RESPECT TO ACCESS TO MICHIGAN BELL’S OPERATIONS SUPPORT SYSTEMS.

The Ameritech-legacy operations support systems that SBC offers CLECs in Michigan and other former Ameritech states are the worst in SBC’s expansive region. DeYoung/Willard Decl. ¶ 15. AT&T’s commercial experience confirms that these systems, and SBC’s superintendence of them, do not provide CLECs in Michigan with access to OSS equivalent to what SBC enjoys. To the contrary, these systems obstruct effective and consistent access to OSS, hinder CLECs from acquiring and keeping customers, drive up CLECs’ costs, and damage CLECs’ business reputations. In these circumstances, there can be no reasoned finding that SBC has fully implemented its obligation to provide CLECs with non-discriminatory access to OSS.

A. Michigan Bell’s OSS Historically Have Been, And Remain, Unstable.

The OSS available to CLECs in SBC’s Ameritech region have been unstable and inadequate for years. As this Commission confirmed at length in the 1997 *Ameritech Michigan 271 Order*, Ameritech’s OSS denied CLECs nondiscriminatory access to the pre-ordering, ordering, maintenance, and billing functions on which CLECs depend to compete successfully in the local market.³ Years after the rest of the industry had moved forward, these woefully inadequate legacy systems languished, neglected and unimproved, until SBC hurriedly attempted

to leapfrog the evolutionary process of systems improvement and impose modern standards upon the old framework. But pouring new wine into old bottles is a proven strategy for disappointment. The result here has been a continuing series of delays, mistakes, and disruptions, with severely anticompetitive consequences for CLECs.

In the years prior to Ameritech's merger with SBC in 1999, and for two years thereafter, the OSS systems in the Ameritech region remained virtually unchanged. The rest of the industry, meanwhile, underwent significant evolutionary change. During this same time, other BOCS were, for example, implementing the standards prescribed by Local Service Ordering Guide (LSOG) version 3 (adopted in May 1998) and then LSOG 4 (adopted in June 1999). But in Michigan, Ameritech and then SBC continued to relegate CLECs to the pre-LSOG 2 interfaces deployed before 1997. DeYoung/Willard Decl. ¶¶ 35-36.

Finally, in March 2001, SBC began hurrying to play catch-up. At that time, SBC attempted to update its antique interfaces by leapfrogging over LSOG 2 and LSOG 3 and going directly to LSOG 4. SBC was obligated, of course, to comply with its merger commitment to achieve uniform interfaces throughout its region. But in attempting to meet this obligation through a radical eleventh-hour systems change, SBC gravely underestimated the limited and primitive nature of the underlying Ameritech systems. As a result, SBC has trapped CLECs into a seemingly endless cycle of exceptions, changes, upgrades, fixes, and fixes-to-fixes, that have wreaked havoc with market entry and continue to deny CLECs nondiscriminatory access to OSS. DeYoung/Willard Decl. ¶¶ 38-46.

No CLEC, to AT&T's knowledge, was ever able to enter production on LSOG 4.00. For months after SBC's March 2001 release of LSOG 4.00, SBC flooded CLECs with a stream of

³ See Ameritech *Michigan 271 Order*, ¶¶ 128-214.

additional requirements, clarifications, and modifications that defeated any CLEC's ability actually to use LSOG 4.00. *Id.* ¶¶ 42-43.

SBC's implementation of LSOG 5 has been similarly cursed. The release of the purportedly "final" documentation was repeatedly delayed (resulting in a total delay of 5 months, from November 2001 to March 2002) and the "final" version was then subject to months of additional exceptions and changes. From August 2001 through August 2002, SBC issued over 175 corrections -- amounting to more than 1,000 pages of revisions -- to the documentation for LSOG 5 alone. DeYoung/Willard Decl. ¶¶ 44-46.

This is not a recipe for successful systems development. AT&T has entered the local market in Michigan and elsewhere in the old Ameritech region, and has experienced the unstable and unreliable nature of SBC's OSS in this region firsthand. As AT&T's commercial experience makes plain, SBC's Ameritech-region OSS are the poorest in SBC's 13-state empire. Indeed, despite beginning entry into SBC's local market in California in the fall of 2002, approximately 95% of the OSS issues that AT&T senior systems engineers addressed with SBC during that time period, and the vast preponderance of daily operational issues, involved the Ameritech region. DeYoung/Willard Decl. ¶ 15. Primarily as a result of SBC's failure to adhere to basic principles of change management, AT&T has experienced rejections and other errors that have affected tens of thousands of AT&T orders. As shown in more detail below, AT&T's experience with the SBC-Ameritech systems confirms that SBC has yet to take the steps needed to provide competitors with nondiscriminatory access to OSS.

B. Michigan Bell's Abysmal Commercial OSS Performance.

The Commission has established the standards that a BOC's OSS must meet before a 271 applicant may be found to have fully implemented its checklist obligation to provide

nondiscriminatory access to OSS. While the Commission has found that third-party testing may be of some probative value where CLEC entry is minimal or non-existent, the Commission places the greatest weight on evidence of actual commercial performance.⁴ Here, that evidence starkly illuminates the inadequacy of SBC's systems.

1. Pre-Ordering.

The pre-ordering information that a CLEC needs to place orders relating to SBC customers is available only from SBC itself. Thus, if SBC denies CLECs the access they need to pre-ordering information, SBC effectively walls off its customer base from any competition. AT&T's market experience demonstrates that SBC has yet to develop a stable and reliable pre-ordering interface. That alone constitutes significant discrimination.

From October through December 2002, SBC's pre-ordering ("CORBA") interface repeatedly imposed outages both on individual CLECs and even system-wide. As a result, AT&T's customer representatives lost all ability to access critical pre-ordering information. There is no work-around for an interface outage. These representatives simply lost the ability to assist customers seeking to sign up for or to modify their AT&T service. The outages also were not isolated, brief events. The total amount of time that AT&T customer representatives were unable to access the CORBA interface over these three months amounted to approximately 500 user hours. DeYoung/Willard Decl. ¶¶ 52-53.

This extraordinary loss of pre-ordering connectivity and functionality strikingly illustrates the instability of SBC's OSS systems. But it is not the sole problem. Most recently, SBC's CORBA interface has begun erroneously to drop zip codes from some customers' records. Although less dramatic than an interface outage, it is nonetheless a serious defect,

⁴ *Ameritech Michigan 271 Order*, ¶ 138; *Quest Nine-State 271 Order*, App. K, ¶ 31.

because it too renders the CORBA interface effectively unavailable to AT&T's representatives. In January alone, this one SBC error has precluded AT&T from filling orders for more than 300 customers in Michigan and Ohio. SBC has conceded that this error is traceable to its systems, and took a week to fix the problem. DeYoung/Willard Decl. ¶ 57-60.

2. Ordering/Provisioning.

SBC's EDI interface and systems for processing CLEC orders also remains unstable. SBC's system errors have seriously disrupted literally tens of thousands of AT&T's orders alone in recent months, usually through erroneous rejections of the orders. Although different in their immediate causes, many of these errors are rooted in SBC's failure to comply with change management requirements.

a. Rejects caused by PIC/LPIC L100/101 errors.

On November 25, 2002, and out of the blue, AT&T began to receive an error message ("L100/101") on thousands of orders. The message was triggered by unannounced changes that SBC made to the rules governing CLEC's designation on an order of the customer's choice of local and long distance carrier (LPIC and PIC). Although these changes were SBC's response to defects noted by BearingPoint in its testing of SBC's systems, SBC never alerted any CLECs before making its changes. As a result, SBC erroneously rejected more than 15,000 AT&T orders. *Id.* ¶¶ 62-64.

SBC's efforts to fix this error say as much about the inadequate state of SBC's systems as the error itself. SBC could not promptly process the erroneously rejected orders, and so the fastest way to process them was for AT&T to resubmit them as "supplemental" orders. But because SBC's performance measures do not report the number of supplemental orders caused by SBC errors, this approach – though necessary to expedite order-processing – had the perverse

effect of rendering SBC's error invisible to the performance reporting and penalty system. And even with AT&T's agreement to supplement, SBC's systems still were not able promptly to process supplements in reasonable volumes. Compounding the problem, SBC's managers could not quickly and accurately to diagnose the problems or meet promised deadlines for resolving them. *Id.*

Indeed, while attempting to correct this ordering problem, SBC committed another error that affected thousands of orders. On December 2, 2002, and with no notice to AT&T, SBC unilaterally (and apparently inadvertently) made changes to a code used by its systems to identify AT&T orders (the "trading partner ID"). This error was discovered when AT&T failed to receive status notices for the supplements of 10,000 of the 15,000 erroneously rejected orders. Although SBC's changes to AT&T's trading partner ID would have been appropriate on December 9, 2002 (when AT&T implemented LSOG 5.02 for placing residential orders), SBC's erroneous and premature systems change further compromised AT&T's ability to use the ordering interface, and underscored SBC's cavalier approach to supporting CLEC access to SBC's OSS. DeYoung/Willard Decl. ¶¶ 65-68.

b. Delays and cancellations caused by SBC's WSIC change.

SBC further disrupted thousands more AT&T orders when it moved precipitously to change its process for dealing with "Working Service In Conflict" (or "WSIC") issues. A WSIC issue arises when a CLEC requests new service (usually an additional line) for a customer location already receiving local exchange service. Where such working service exists, SBC asks the CLEC to confirm whether the existing service has been abandoned, or whether the new service should be provisioned as an additional line. SBC's new process, for which it gave CLECs only five weeks notice (rather than the four months required by its change management

process), involved SBC manually faxing jeopardy notices to CLECs (again invisible to SBC's performance reports) and required CLECs to supplement their orders to avoid rejection. *Id.* ¶¶ 69-70.

AT&T had neither designed its systems to provide a mechanized response to a manually faxed jeopardy notice nor received any prior notice from SBC of a need to do so. SBC bulldozed ahead with its WSIC process-change anyway. It deluged AT&T with 2,000 faxes (800 of them sent in error) in the first month of the process alone. By November 2002, SBC's new WSIC process had delayed the processing more than 5,000 AT&T orders, leading to customer complaints and cancelled service. *Id.* ¶¶ 73-74.

Adding insult to injury, SBC then failed promptly to clear the backlog of AT&T's delayed orders. As recently as the end of January, 2003, SBC still had not provisioned approximately 500 orders from the August-November 2002 time frame. To avoid potential accusations of "slamming" that could arise in view of this SBC-caused delay, AT&T is now incurring the additional expense of calling each customer to confirm their now months-old order. SBC's refusal to provide the requisite notice for its systems change, combined with SBC's bungled implementation of the change and dilatory response to the problems it caused, all combined to create a serious and on-going competitive problem for AT&T. *Id.* ¶ 75.

c. Rejects caused by H325/B103 errors.

Only a month before filing this 271 application, SBC erroneously rejected additional thousands of AT&T orders. These rejections resulted when SBC applied the "edits" that exclusively govern orders submitted according to the LSOG 5 version of EDI, to orders that AT&T had actually submitted according to LSOG 4. About 1,000 AT&T orders were rejected as having included too many telephone numbers (error code "H325"), while another 1,800 were

wrongly rejected for having an invalid listing type (error code “B103”). AT&T supplemented many of these orders, and that proved to be a good decision. The several hundred orders that AT&T relied on SBC manually to “un-reject” took nearly a month to process, thus delaying customer service for weeks. DeYoung/Willard Decl. ¶¶ 77-81.

d. Rejects recently caused by hunting and other errors.

SBC’s manual and electronic processes continue to generate a dizzying array of inexplicable errors. During the week of January 13, 2003, SBC rejected approximately 800 AT&T orders because its OSS were unable to read hunting information. AT&T was forced to escalate resolution of the matter, which SBC attributed to human error connected with SBC’s work on its “test engine” -- though the orders had nothing to do with any test. *Id.* ¶¶ 104-05.

SBC also accepted responsibility in January – but could provide no explanation at all – for hundreds of erroneous rejections in December and January that mysteriously returned to AT&T with the error messages LS6327 and G381. Once again, to avoid further delays, AT&T was required to send supplemental orders. *Id.* ¶ 106.

Yet more AT&T orders were rejected in January with the error code H332. Properly used only when the CLEC’s order contains a missing value for the customer’s name or state, this error code appeared throughout January as the (incorrect) reason for rejecting perfectly valid AT&T orders. Although SBC claims to have implemented a fix, to date that fix has not stopped the errors. DeYoung/Willard Decl. ¶¶ 101-03.

Yet other orders were erroneously rejected in January without reference to any error code. SBC’s explanation this time – that the orders were improperly submitted over the GUI interface – was a non sequitur, since all were EDI orders. These episodes all provided further

confirmation, if any were needed, that when AT&T submits an EDI order to Michigan Bell, anything can happen. *Id.* ¶¶ 107.

e. Rejects caused by G408 errors.

This recent onslaught of erroneously rejected orders is all the more distressing because of all the warning SBC has had that its systems are prone to generating erroneous rejects with inapplicable error codes. In September 2002, for example, SBC wrongly rejected approximately 15,000 orders with the error code “G408,” which is supposed to indicate an error in ordering a feature. Unbeknownst to AT&T, SBC had implemented a systems change, altering the EDI coding requirements by eliminating the need for a space between certain feature-related information on the order. Of course, as AT&T had received no prior notice of the change, it had no opportunity to alter its systems to remove the space. The SBC systems-problems that triggered the erroneous G408 error codes then took weeks to resolve. As a result, AT&T was forced to supplement thousands of orders, and make systems changes of its own, to minimize the delay in processing these thousands of orders. DeYoung/Willard Decl. ¶¶ 82-90. Once again, having AT&T supplement the erroneously rejected orders had the misleading (but salutary, from SBC’s perspective) result of removing the errors from the performance reporting radar screen. SBC has thus been erroneously rejecting thousands of AT&T orders for months now, with no end to this disruption in sight.

f. Failure to Send Billing Completion Notices.

Yet another recent manifestation of SBC’s unstable systems has been SBC’s inability to supply AT&T with the billing completion notices (“BCNs”) that acknowledge receipt of orders submitted via the LSOG 5 version of EDI. The BCN is important because, in the absence of a BCN, AT&T cannot submit a supplemental order without receiving an error message. Although

SBC was aware of the problem as early as December 5, 2002, it has taken SBC nearly two months to claim to make a correction available, which SBC only started to implement on February 3, 2003. In the meantime, tens of thousands of AT&T orders have gone without receiving a timely, or in some cases any, BCN. DeYoung/Willard Decl. ¶¶ 91-100. The instability and unreliability of SBC's ordering and provisioning systems thus persists to this day.

3. Maintenance and Repair.

SBC does not provide CLECs with nondiscriminatory access to maintenance and repair. AT&T has two principal concerns. First, AT&T submits a much higher volume of trouble tickets to Michigan Bell than it would expect given AT&T's experience with other BOCs. Second, it takes Michigan Bell much longer to clear these trouble tickets than it should. AT&T's ability to respond effectively and swiftly to repair-related concerns bears directly on its customers' perception of AT&T's ability to provide high-quality local service. For this reason, AT&T does and must take repair and maintenance problems very seriously.

AT&T has an important and related concern. There is wide disparity in the number of trouble tickets that AT&T has submitted (and SBC has acknowledged receiving) and the number of trouble tickets SBC has chosen to report in connection with its performance reporting obligations. If AT&T's experience reconciling this issue with SBC in Texas is any guide, then (as shown further below) this experience will provide further evidence that SBC's data reports do not accurately describe its true commercial performance. *See* DeYoung/Willard Decl. ¶ 108.

4. Billing.

SBC also does not offer CLECs nondiscriminatory access to SBC's billing functionality. To comply with its obligations under Section 271, SBC must demonstrate that it provides CLECs with complete, accurate, and timely reports on service usage of CLEC customers. *Verizon*

Pennsylvania 271 Order ¶ 13; Qwest 9-State 271 Order ¶ 115. SBC fails to meet this standard because it has not consistently provided a timely, complete, and readable line loss notification (“LLN”). An LLN notifies a CLEC that one of the CLEC’s customers has decided to end its service. It is typically the only notice that a CLEC will receive of the loss of the customer. Accordingly, a timely and readable LLN is crucial to any CLEC’s effort to provide customers with an accurate and timely final bill, and to avoid duplicative or “double” billing along with the customer’s new LEC. DeYoung/Willard Decl. ¶ 110.

Double billing has been a longstanding problem in this region. In the *Ameritech Michigan* proceeding, this Commission determined that Ameritech’s systems caused Ameritech to continue billing the customer after migration to the CLEC – a far less serious mistake (since it belonged, in the customer’s eyes, to Ameritech) than the LLN problem. Nevertheless, this Commission held that “the double billing problem is compelling evidence that Ameritech’s OSS for ordering and provisioning for resale services is not operationally ready” and that Ameritech is “not providing nondiscriminatory access to OSS functions.” *Ameritech Michigan 271 Order ¶ 203.* The Commission further determined that “in and of itself, double billing is a serious problem that has a direct impact on customers, and therefore, must be eliminated.” *Id.*

More recently, the Michigan Public Service Commission recognized the importance of the double billing issue caused by inadequate LLN support when it declared that SBC’s inability to provide accurate line loss notification “

has a great potential effect on competition for local exchange service and is one of the most serious of the problems raised in this case. Billing for services after they have been cancelled violates Section 502(1)(c) of the Michigan Telecommunications Act Failure to provide timely notice of migrations is an egregious and anticompetitive neglect of [SBC]’s duty. This problem, including both CLEC-to-CLEC migration and Winback changes, must be

resolved promptly. Therefore, the Commission directs Ameritech Michigan to file, within 20 days, a comprehensive report on its efforts to resolve it. Specifically, Ameritech Michigan must delineate the success of its efforts in resolving these issues to date”⁵

In this region, however, these pleas continue to fall upon deaf ears. In March 2002, SBC began sending LLNs without the relevant telephone number, a problem that took many weeks and false starts to correct. In August and September, SBC failed to send AT&T nearly 7,000 LLNs, a massive failure triggered by three separate system defects. In November, yet more LLN problems surfaced that resulted in SBC issuing AT&T over 1,000 unusable LLNs (they lacked a conversion date, without which no accurate bill can be generated). Finally, in December SBC sent AT&T nearly 3,000 LLNs that were coded in an old version of EDI that AT&T was no longer using, and hence that AT&T’s systems could no longer read. All told, SBC’s systems sent over 10,000 erroneous LLNs to AT&T alone over the last five months of 2002. DeYoung/Willard Decl. ¶¶ 110-30.

This consistently poor performance – remarkably in itself – is all the more extraordinary given SBC’s history of LLN and related billing problems and the Michigan Public Service Commission’s directive over a year ago to solve the problem. It is yet further proof that its systems are unstable, and do not yet reliably provide CLECs with nondiscriminatory access to essential OSS functionality.

5. Effects Of SBC’s Inadequate OSS On Customers and Competitors.

The fact that the recurring SBC errors and system defects described above have repeatedly affected tens of thousands of AT&T orders throughout 2002 and into 2003 is more

⁵ Opinion and Order, *In the Matter, on the Commission’s Motion, to Consider Ameritech Michigan’s Compliance with the Competitive Check List in Section 271 of the Federal Telecommunications Act of 1996*, Case No. U-12320 (12/20/01), at 6 (“December 2001 Order”).

than ample evidence that SBC's has not yet fully implemented its obligation to provide nondiscriminatory access to OSS. This is not mere anecdotal evidence of fleeting or minor glitches. These repeated errors, affecting a substantial percentage of AT&T's order volume and customer base, preclude a finding of checklist compliance.

These SBC system errors also have adversely affected AT&T's ability to compete with SBC in other measurable ways. The percentage of prospective AT&T customers in Michigan who cancelled their service after ordering it – but before receiving it – increased between September and November 2002 when AT&T was experiencing substantial SBC-caused delays in the provisioning of service. *Id.* ¶ 20. The rate of customer disconnects – customers who have decided to drop AT&T as their local service provider – is markedly higher in Michigan than in other states. The level of customer “drops” (i.e., cancellations and disconnects as a percentage of customer acquisition overall) is far higher in Michigan than other states, including the SBC non-Ameritech states of Texas and California. *Id.* ¶¶ 19-20, 134. Although it is impractical to trace every particular cancellation or disconnect to a single root cause, there is no question that interface outages, erroneous rejects and other delays in provisioning orders, failure to send accurate line loss notices, and other such errors all severely compromise AT&T's ability to provide customers with prompt answers to their questions, to provision their service accurately, and to support that service reliably. These repeated failures have also raised AT&T's costs of providing local service in Michigan. Every OSS failure – whether related to line loss failures, erroneous rejects, or system outages – requires AT&T to incur substantial costs to address customer service issues, resubmit orders, perform root cause analysis and take other corrective action. In this way, SBC benefits from raising its rivals' costs. Thus, until SBC proves that its

poor OSS performance is permanently relegated to the past, this Commission should deny its application for 271 authorization in Michigan. *Id.* ¶ 135.

C. SBC's Unduly Restrictive Access To Multiple Versions Of EDI.

SBC's poor commercial performance is more than sufficient to demonstrate that it is not providing CLECs with nondiscriminatory access to OSS. But there is another way in which SBC is also denying CLECs such access. SBC is refusing to meet its obligation to provide CLECs with reasonable and nondiscriminatory access to multiple versions of EDI. *Id.* ¶ 136-57.

This Commission has repeatedly recognized the importance to CLECs of having access to more than one version of EDI.⁶ As the Commission has acknowledged, ILECs control their deployment of each new version of EDI. If an ILEC were permitted to reject all CLEC orders submitted using any version of EDI other than the one most recently deployed by the ILEC, the ILEC would have an unusually powerful tool with which to disrupt and shut down local competition. No CLEC could afford to build multiple interfaces just to be sure it could meet each BOC's unique timetable for deploying new versions of EDI. Thus, to fully implement its obligation to provide CLECs with nondiscriminatory access to OSS, an ILEC must accept orders submitted over multiple versions of EDI.

SBC has long resisted CLEC demands that it accept and implement a reasonable versioning policy. No other RBOC imposes comparable limitations. *Id.* ¶¶ 137-39, 152-57. SBC's restrictions create enormous barriers to competition through line-splitting, as well as

⁶ See, e.g., *Texas 271 Order* ¶ 115 (finding that versioning "is one of the most effective means of ensuring that system changes and enhancements do not adversely affect a carrier's ability to access the BOC's OSS" and "is integral to a section 271 applicant's demonstration that the change management plan it has in place affords competing carriers a meaningful opportunity to compete").

obstacles to effective facilities-based and UNE-based competition in both the local residential and business markets. *Id.* ¶¶ 140-50.

Alone among RBOCs, SBC links the availability of a particular version of EDI to the CLEC's use of a state-specific operating company number (the "Operating Company Number" or "OCN"), which is associated with a given company name (the "Access Carrier Name Abbreviation" or "ACNA"). Thus, in Michigan, AT&T has been allotted one OCN per ACNA to use in submitting orders. Once AT&T sends an order using a given ACNA and OCN, all subsequent orders from that OCN must be sent in the same version of EDI that was used to place the first order. This OCN-related restriction on versioning severely restricts the access of CLECs to Michigan Bell's OSS. *Id.* ¶¶ 137-52.

SBC's OCN restriction creates an enormous barrier to competition through line-splitting, and indeed to any competition that requires the collaboration on orders between a CLEC and a third-party. The essence of line-splitting is the collaboration of two companies to provide voice service and data service to a single customer over a single phone line. AT&T, for example, recently entered into an agreement with Covad to provide a combined voice and data service to customers in SBC's region, including in Michigan. In this arrangement, Covad submits the line-splitting order to SBC using AT&T's OCN. As SBC acknowledges, this step is essential to ensure correct processing of the order; it is also appropriate because Covad, as the data service provider, will perform the collocation-related work needed to provision the customer's DSL service. But unless Covad (or any third party data service provider) submits such an order using the same version of EDI that AT&T is using, that order will be rejected. *Id.* ¶¶ 142-49.

There is simply no feasible way for AT&T to ensure that its third-party partner will always be on the same version of EDI as AT&T. Indeed, that is the whole point of imposing a

versioning obligation on SBC and other ILECs in the first place. There are many considerations that affect the choice and timing of implementation of a new version of EDI, and that is obviously true of a data LEC, such as Covad, who may wish to support line-splitting arrangements with multiple voice carriers (e.g., WorldCom as well as AT&T) who are each on a different version of EDI. If SBC were permitted to require multiple CLECs to proceed with lockstep implementation of new EDI versions in order to engage in line-splitting, then SBC would render line-splitting impractical for that reason alone. *Id.* ¶¶ 142-49.

The anticompetitive consequences also are not limited to line-splitting. For example, AT&T has an agreement with another third party to convert certain customers from a UNE-P configuration to UNE-L. SBC's OCN requirement presents an enormous practical obstacle to the implementation of this agreement as well. *Id.* ¶¶ 141, 151. Indeed, even where no third parties are involved, SBC's requirement unfairly raises the costs of AT&T's own systems development, as it compels both of AT&T's local business units (which send transaction to ILECs through separate interface platforms) either to coordinate their implementation of new EDI versions or invest in expensive work-arounds to avoid blanket rejection of orders. *Id.* ¶¶ 143 n.43.

SBC knows of this problem, and knows it could fix it. But the price that SBC has put on such a fix is wholly unacceptable. SBC will fix the OCN limitation only if CLECs relieve SBC of its duty to support two major LSOG versions at any one time. *Id.* ¶¶ 152-57. Such a resolution is, of course, impossible; it would gut the core protection that versioning affords, which CLECs could never do in an OSS environment as hostile as is Michigan Bell's. SBC's offer of a Hobson's choice confirms that its failure to afford CLECs nondiscriminatory access to OSS reflects not only its unstable systems, but a policy decision that impedes competitive entry.

D. SBC's Poor Support Is Making Problems Worse, Not Better.

SBC's inadequate OSS systems and processes increase the burden on CLECs seeking to enter the local services market in Michigan. The problem is further compounded by SBC's failure to provide the necessary support to CLECs regarding SBC's OSS. In this regard, SBC is clearly failing to provide the "necessary systems and personnel to provide sufficient access to each of the necessary OSS functions" or "adequately assist[] competing carriers to understand how to implement and use all of the OSS functions available to them." *Qwest Nine-State Order*, App. K, ¶ 29.

1. SBC Violates Its Change Management Duties.

A root cause of much of the disruption that SBC causes CLECs in Michigan is SBC's failure to follow basic change management procedures. Once an interface is in production, SBC views itself as having no further obligations under the Change Management Plan (CMP). SBC has therefore acted unilaterally to alter its systems and revise its business rules without providing *any* prior notice to CLECs, let alone the notice required by the CMP. While SBC disputes the point, the Michigan PSC confirms it. In the words of the Michigan PSC: "SBC's recent OSS changes *were not announced* prior to their implementation and *did negatively affect the CLECs.*"⁷

SBC's refusal to adhere to the change management process is not inadvertent. It reflects instead a considered decision not to encumber its systems managers with worries about the impact of systems changes upon CLECs. SBC claims to have complete freedom to make any changes it wants to existing interfaces. It confirmed this position just last month, when it

⁷ Opinion and Order, *In the Matter, on the Commission's Own Motion, to Consider Ameritech Michigan's Compliance with the Competitive Checklist in Section 271 of the Federal Telecommunications Act of 1996*, Case No. U-12320, at 10 (1/13/03) (emphasis added).

claimed to be entitled to make yet another systems change – this time to the notifications that SBC provides CLECs of state orders (through “PIA 8” notices) – without following change management procedures. DeYoung/Willard Decl. ¶¶ 159-76.

SBC’s entrenched refusal to provide proper notification to CLECs of systems changes to existing interfaces violates the letter of SBC’s change management plan. See DeYoung/Willard Decl. ¶¶ 160-62 (discussing, e.g., §§ 3.0, 3.1.1, 3.1.2, 6.3.1, 6.3.2, and 6.3.3 of SBC’s 13 State Uniform Change Management Process (“CMP”)). It violates the spirit of the CMP as well. An incumbent monopolist has few more potent weapons to obstruct local competition than unilaterally altering existing interfaces without regard to change management obligations. Even one improper change can disrupt tens of thousands of orders and severely disadvantage a competitor. Indeed, nearly all of the major performance problems recited in Part I.B.2 above stemmed from systems changes by SBC that were made without notice to CLECs. These included: SBC’s unannounced change in its rules for populating certain fields relating to a customer’s choice of carrier caused SBC erroneously to reject 15,000 AT&T orders in the stretch of a few days; SBC’s unannounced changes to its EDI code, which also led to at least 10,000 erroneous rejections; and SBC’s shift to manual jeopardies for WSIC notices without giving CLECs the requisite time to accommodate that systems change caused substantial delays for 5,000 orders, with ramifications continuing today. *Id.* ¶¶ 62-76, 164. SBC would have prevented all of these and other disruptions had it followed the change management process.

There is no effective check in Michigan today on SBC’s abuse of the change management process. SBC thus has every incentive to continue disrupting its competitors through unilateral and unannounced changes its systems. The opportunities for future abuse of the process are abundant; notably, SBC is expected to implement LSOG 5.03 on March 15,

2003, and LSOG 6 in June. In light of past experience, SBC can be expected to make numerous unannounced and untimely systems changes that will prolong the cycle of erroneous rejections, delays, and supplements that block effective local competition today. Unless and until SBC demonstrates that it is adhering faithfully to the change management process and is consistently providing CLECs with timely notice of all systems changes – including but not limited to those involving deployment of new versions of EDI – that affect CLECs’ ability to access SBC’s OSS, SBC cannot fairly be deemed to have fully implemented nondiscriminatory access to OSS. *Id.* ¶¶ 176.

2. Test Environment.

SBC has also recently taken steps to restrict access to SBC’s joint test environment. AT&T and other CLECs use SBC’s joint test environment to run test scenarios of OSS changes to ensure that such changes can be implemented smoothly and without interruption. It is often necessary to conduct multiple retests several times in the joint test environment after making code changes to ensure that such changes do not negatively affect prior test cases or upstream systems. In the past, SBC has cooperated in making its joint test environment available for the necessary multiple retests. DeYoung/Willard Decl. ¶¶ 178-82.

In January 2003, however, SBC began placing unreasonable limits upon AT&T’s ability to use the joint test environment. SBC now demands that AT&T perform no more than three retests, a limitation that unreasonably restricts AT&T’s ability to test its OSS to ensure that such systems properly interface with SBC. SBC has not placed similar limits on its own ability to test its OSS, and its restrictions on AT&T are therefore discriminatory. They also introduce yet another obstacle to effective CLEC use of SBC’s already problematic interfaces. DeYoung/Willard Decl. ¶¶ 183-85.

3. Inadequate Documentation.

SBC's OSS documentation is inadequate and unreliable. As discussed above, the documentation for LSOG 5 was repeatedly delayed and then repeatedly revised with over 1000 pages of changes. The lack of complete and accurate documentation has greatly increased problems with implementation of OSS changes and caused CLECs to incur additional expense and effort in seeking to comply with SBC's inadequately documented processes and procedures.

Indeed, SBC does not even maintain necessary documentation regarding OSS for its own use. AT&T has requested information on the procedures AT&T must follow to disconnect the billing telephone number ("BTN") for a customer with multiple lines.⁸ In response, SBC stated that it had *no* documented procedures for such a situation and would have to develop processes for this matter. SBC's continuing failure today to maintain even the most basic documentation confirms that the documentation problems that have plagued CLEC access to SBC's OSS for over two years continue to this day, thereby further contributing to the lack of nondiscriminatory access to OSS. *Id.* ¶¶ 186-95.

4. Untimely And Likely Strategic Reductions In CLEC Support.

The foregoing evidence shows beyond reasonable dispute that SBC's competitors are awash in significant OSS problems of SBC's making. Nevertheless, SBC has taken no action to increase the level of technical or account support available to CLECs. To the contrary, at the time when CLECs' need for OSS support has never been greater – and scrutiny of SBC's

⁸ For customers with more than one SBC account (and thus more than one BTN), disconnection requires multiple orders because SBC Ameritech (alone among the SBC corporate family) requires that all orders be related to the customer's BTN. Thus, an order to migrate multiple lines will be rejected unless there are separate orders for each BTN classified as related orders. AT&T requested that SBC eliminate this Ameritech-specific practice, but SBC refused to do so, citing the complexity of the change and the cost. DeYoung/Willard Decl. ¶¶ 189-92.

performance should be at its zenith – SBC has chosen to shift resources away from supporting CLECs in favor of its own business needs. *Id.* ¶¶ 196-202.

In a December 2002 “reorganization,” several Vice Presidents that previously had responsibility for OSS matters have been transferred to other areas -- areas that provide a higher return to SBC than “local products” -- and their responsibilities have now been spread among fewer lower level personnel who must serve a larger number of CLEC clients. SBC’s ability to respond to OSS problems was inadequate before, and it will now be even worse as CLECs raise more problems to fewer overworked managers with less authority to resolve problems. DeYoung/Willard Decl. ¶¶ 198-200. Thus, by diverting OSS expertise away from CLECs and to its own needs, SBC has chosen to respond to its discriminatory OSS performance with resource allocation that is itself discriminatory.

SBC’s decision to reduce resources for supporting CLECs will, in all events, perpetuate and likely exacerbate SBC’s ongoing denial of nondiscriminatory access to OSS. That result may not be entirely unforeseen. SBC told its investors that one of its key “initiatives” for the third quarter of 2002 was to reduce its workforce by “proportionately greater [numbers] in states with lowest UNE-P” rates.⁹ SBC Michigan’s President has unequivocally confirmed SBC’s view that Michigan is one of the states with UNE rates that “make[] it nearly impossible for SBC to maintain the current levels of employment and investment.”¹⁰ SBC is thus carrying out disproportionate workforce reductions – including key employees formerly tasked with supporting CLEC access to OSS -- as a strategic response in Michigan to the setting of cost-based rates and the advent of local competition. This anticompetitive strategy is working. The

⁹ SBC Investors Update, 3d Quarter 2002, at p. 16 (attached hereto as Exhibit 2).

¹⁰ Letter from Gail Torreano, President, SBC Michigan (Sept. 11, 2002) (attached hereto as Exhibit 3).

OSS-related barriers to effective local competition in Michigan that SBC has created are securely in place.

II. SBC’S UNRELIABLE PERFORMANCE DATA ALSO PRECLUDE A FINDING THAT IT HAS SATISFIED ITS SECTION 271 OBLIGATIONS.

Performance measurements provide “valuable evidence” for determining whether an ILEC can provide access to OSS functions and network elements on a nondiscriminatory basis. *Connecticut 271 Order, Appendix D*, ¶7; *Michigan 271 Order* ¶22. To satisfy its obligations under Section 271, an ILEC must demonstrate that the performance measures accurately track its performance and allow an appropriate determination of the adequacy of its OSS functions. To meet that standard, the “reliability of reported data is critical; the performance measures must generate results that are meaningful, accurate, and reproducible.” *Kansas/Oklahoma 271 Order*, ¶ 278.

SBC’s performance data do not begin to satisfy these Section 271 requirements. First, much of SBC’s deficient OSS performance, which continues to hinder CLECs’ ability to compete, is not captured in the performance measures. Second, SBC’s performance data are not reliable, accurate, or reproducible. As the Michigan Public Service Commission found, SBC’s processes for gathering and reporting performance data have not yet “fully achieved a level of stability and dependability” required for “monitoring and assurances against discriminatory behavior.”¹¹ The Michigan PSC could hardly conclude otherwise, given that during the period May-December 2002, SBC restated data for 907 measures and made 1623 changes to those measures, or that in the month of December 2002 alone, 247 measures were changed a total of 292 times. Finally, the third-party tests on which SBC relies do not contradict the Michigan

PSC's finding – they support it in spades. The ongoing BearingPoint audit – commissioned by the Michigan PSC – has uncovered hundreds of Exceptions and Open Issues. As of February 4, 2002, BearingPoint still has 15 open exceptions and 88 open observations that have not been resolved. Moore/Connolly Decl. ¶ 53. Ernst & Young's limited and SBC-commissioned testing neither refutes nor supercedes BearingPoint findings, but instead raises additional questions about reliability that neither Ernst & Young, BearingPoint, nor SBC has yet answered.

A. SBC's Performance Measure Data Fail To Reflect Key OSS Problems That Adversely Affect CLECs.

SBC cannot rely on its performance data to demonstrate nondiscriminatory access to its OSS. That is because the performance measure data fail to capture several significant problems with its OSS that are critical to CLECs offering competitive services, either because the measure is not designed to capture the problems CLECs are experiencing or because CLECs are forced to take action in response to system failures by SBC that effectively enables SBC to mask its deficient performance under the metrics. For example, SBC's performance measures fail to capture the effect of its improper rejection of AT&T orders. In the last three months of 2002, SBC improperly rejected approximately 38,000 AT&T orders and failed to provide timely Firm Order Confirmations ("FOC") for them. To avoid further delays, AT&T was forced to supplement and resubmit those orders. The cancellation of the original (wrongly rejected) order had the effect, however, of erasing that order from SBC's performance reports, even though SBC was responsible for its cancellation as a result of the improper rejection. SBC's failure to capture orders in its performance measures that are improperly rejected overstates the reliability of

¹¹ Report of the Michigan Public Service Commission, *In the Matter, on the Commission's Own Motion, to Consider Ameritech Michigan's Compliance with the Competitive Checklist in Section 271 of the Federal Telecommunications Act of 1996*, Case No. U-12320, at 22 (1/13/03) (the "Michigan Report").

SBC's service and fails to reflect an important defect in SBC's OSS processes. Moore/Connolly Decl. ¶¶ 26-27.

SBC's performance measurement statistics also do not track SBC's ongoing failure to provide line loss notifications on a timely and accurate basis. The only performance measure for line loss notifications is PM MI 13 (Percent Loss Notification Within One Hour of Service Order Completion), which tracks only the timeliness of SBC's issuance of line loss notification. Even a cursory review of SBC's own self-reported data shows that the data collection for PM MI 13 *must* be seriously flawed. SBC's self-reported results for December 2002 show, for example, that AT&T received 6,918 line loss notices, 6,378 of which (92%), according to SBC, were on time. In contrast, AT&T's own data for December 2002 show that it received 2,966 late line loss notices.¹² Thus, SBC's significant failures with respect to Line Loss Notification that have seriously impeded AT&T's ability to use Michigan Bell's OSS successfully and efficiently appear to be nowhere reflected in the performance data on which SBC so heavily relies to support its Application. Moreover, this measurement is not designed to capture inaccurately formatted or incomplete LLNs. Thus, the measures would not and did not capture, for example, SBC's failure in November to send LLNs that included disconnect dates. Moore/Connolly Decl. ¶¶ 23-24.¹³

In December, AT&T upgraded to the LSOG 5 version of EDI, and as part of that upgrade, AT&T is scheduled to receive a billing completion notice once an order has been

¹² Ehr Aff., Exhibit A, MI 13 at 187.

¹³ In light of these problems with line loss notifications, AT&T and other CLECs have requested an additional performance metric that measures line loss notification accuracy. SBC has agreed to implement such a measure, but it is not included in the data submitted with its Application. Moore/Connolly Decl. ¶ 25 n. 3.

processed by SBC's legacy systems.¹⁴ Even though LSOG 5 provides for delivery of billing completion notices, AT&T has yet to receive thousands of such notices from SBC. SBC's inability to provide timely billing completion notices is not reflected in SBC's performance measures because no performance measure governing delivery of billing completion notices exists. As a result, SBC's failure to provide BCNs on a timely basis also is nowhere reflected in SBC's performance measures. Moore/Connolly Decl. ¶ 29.

Finally, Performance Measure MI 15 exists for change management, which measures the timeliness of change notifications for final requirements to implement changes. As discussed in the DeYoung/Willard Declaration, SBC routinely makes changes to the OSS and business rules without providing the appropriate notice required by the change management process. Performance Measure MI 15 does not capture, however, SBC's failure to provide timely notice of its frequent changes to OSS and business rules. Moore/Connolly Decl. ¶ 30.

If these performance failures were included in performance measurement data, AT&T estimates that SBC would have been required to pay AT&T an additional \$10 million pursuant to its performance assurance plan based on late FOCs and missed due dates alone. Even if only some of the disruptions in AT&T's service were included in the performance data, the additional payments would be substantial. For example, assuming conservatively that SBC errors caused SBC to provision 19,000 Michigan orders after the due date on the original order, SBC should have been required to pay more than \$1.3 million to AT&T for failing to meet Performance Measurement 28 (which measures the percentage of customer orders completed within the customer-requested due date) with respect to these orders. SBC would also have been required

¹⁴ As discussed in the DeYoung/Willard Declaration (at ¶¶ 92-93), the billing completion notice is important because it notifies AT&T when AT&T has assumed responsibility for a customer and is needed before AT&T can modify a customer's order.

to make additional payments for failing to meet other performance measurements, such as PM-5 (Percentage of FOCs returned within “X” hours). DeYoung/Willard Decl. ¶ 28; Moore/Connolly Decl. ¶ 28.

B. SBC’s Existing Performance Measures Do Not Provide an Accurate Gauge of SBC’s Performance Because SBC’s Data is Unreliable.

The “reliability of reported data” submitted in support of a Section 271 application is “critical” to this Commission’s review of that application. *Kansas/Oklahoma 271 Order* ¶ 270. SBC must therefore demonstrate that its performance reports are accurate, meaningful, and reproducible before such reports can reliably serve as the basis for determining that SBC is meeting its performance obligations. As this Commission has made clear, performance data is not probative of compliance with section 271 unless it is “above suspicion.” *Texas 271 Order* ¶ 429.

SBC’s performance data are not only suspect – they have already been indicted. In its report dated January 13, 2002, the week prior to SBC’s submission of its application, the Michigan PSC expressed grave concerns about SBC’s performance data. After reviewing the state of the record and the tests conducted by BearingPoint and Ernst & Young, the Michigan PSC concluded that SBC’s performance measures were neither stable or dependable:

“At this time, the Commission cannot conclude that SBC’s performance metric reporting process has fully achieved a level of stability and dependability which will be required in the post-Section 271 environment to permit continued monitoring and assurances against discriminatory behavior.”¹⁵

¹⁵ Michigan Report at 22

In response to comments by AT&T and other CLECs regarding the innumerable restatements of data by SBC during the test period, the Commission also agreed that such restatements were clear evidence that the SBC's performance measures were not stable:

“the Commission agrees these frequent restatements are indicative of the fact that stability has not yet been achieved in SBC's metrics reporting, particularly during this time of responding and correcting issues identified by both BearingPoint and E&Y. Again the Commission believes reporting stability is at this time an unachieved goal.”¹⁶

No reliance can be placed on this performance data until such reporting stability is achieved.

Moore/Connolly Decl. ¶¶ 33-34.

In addition to the problems with stability, the Michigan PSC identified 21 performance measures, representing approximately 14 percent of SBC's 150 performance measures, that were suspect. For these performance measures, the Commission warned that “reliance will be made with caution,” and it determined that “the data reported for [certain of these 21] measures may not be expected to represent what is reasonably understood to be the intent of those measures.”¹⁷ *Id.*

Notwithstanding its findings, however, the Michigan PSC believed it could recommend approval because various performance measures were found to be acceptable in the incomplete tests and because the “FCC concluded in its Georgia Section 271 approval [that] all audits need not have been completed prior to the filing of a Section 271 application.”¹⁸ Moore/Connolly Decl. ¶ 35.

¹⁶ *Id.* at 17.

¹⁷ *Id.* at 20, 22.

¹⁸ Michigan Report at 22.

The Michigan PSC applied the wrong standard. As the Michigan's PSC's comments demonstrate, SBC's performance measures lack reliability and do not generate results that are "meaningful, accurate and reproducible." This Commission has never approved an application where the state commission itself conceded that the performance data on which the applicant relies are suspect. Moore/Connolly Decl. ¶ 36.

Moreover, the Michigan PSC's reliance on the *Georgia/Louisiana 271 Order* is mistaken. Indeed, in the first Georgia/Louisiana proceeding, BellSouth withdrew its application in December 2001 in part because of the Commission's concerns with data integrity. *See* Statement of FCC Chairman Michael Powell on Withdrawal of BellSouth 271 Application (December 20, 2001). In that first proceeding, the DOJ Evaluation had expressed serious concerns about BellSouth's data integrity, noting problems with BellSouth's data collection, data handling, and metric calculations.¹⁹ The DOJ cited changes to the performance metrics and problems with development of performance data as a result of software coding errors, problems with measurement of data timeliness, restatements of data, and the validity of performance measures as factors contributing to BellSouth's performance measure problems.²⁰ Moore/Connolly Decl. ¶¶ 37-38.

When the application was resubmitted in 2002, both the Georgia and Louisiana Commissions found that BellSouth's performance data were accurate, and this Commission concurred, stating that "BellSouth performance data is accurate, reliable, and useful."²¹ The DOJ Evaluation in the second proceeding noted the progress made by BellSouth, although it warned

¹⁹ Georgia/Louisiana 271 Proceeding, Case No. 01-277, DOJ Eval., at 30-32 (11/6/01).

²⁰ *Id.* at 32-38. A number of these problems similarly affect SBC's performance data.

²¹ *Georgia/Louisiana 271 Order* ¶ 19.

that reliance on an incomplete audit was not advisable.²² Two separate audits of BellSouth data had been completed at the time of the second Georgia/Louisiana 271 proceeding, and a third test was still in progress at the time of the Commission's decision. The Commission determined that it would "give greater weight to evidence that has been audited" and stated that the problems uncovered in the unfinished audit had "only a small impact on the data."²³ *Id.*

The contrast with Michigan is striking. The second Georgia/Louisiana proceeding featured two completed metric audits. In Michigan, the BearingPoint test is ongoing and scheduled to be completed in the second quarter of 2003. Even Ernst & Young has not completed its work; it has not yet received materials from SBC needed to address E&Y's findings of deficiencies. In addition, as discussed below, both these tests already have revealed serious problems with SBC's performance reporting that have yet to be remedied. Finally, although the Georgia and Louisiana state commissions unreservedly found that the BOC applicant's performance measures were reliable and accurate, the Michigan PSC has found that SBC's performance reports are not reliable, dependable, or in certain cases accurate. In these circumstances, SBC's Michigan 271 application is plainly premature. *Id.* ¶¶ 38-39.

C. The Testing Conducted By BearingPoint and SBC's Hand-Picked Auditor Ernst & Young Does Not Support the Reliability or Accuracy of SBC's Performance Data.

Both BearingPoint and Ernst & Young have conducted tests of SBC's performance data. Neither test has been completed, and neither test supports SBC's claims about the reliability of its performance data. BearingPoint (formerly KPMG Consulting, Inc.), which has performed audits of BOC performance measurement systems in a wide number of states as part of the 271

²² Georgia/Louisiana 271 Proceeding, Case No. 02-35, DOJ Eval., at 18-20 (3/21/02).

²³ *Georgia/Louisiana 271 Order* ¶ 19 & n. 68.

process, has been working since 2000 to complete a review of SBC's systems based on a Master Test Plan developed in an open and collaborative process. BearingPoint's test has found significant defects in SBC's performance measure processes and systems. Ernst & Young, which acts as SBC's financial statement auditor, was hand-picked by SBC to perform an end run around the significant problems discovered by BearingPoint. SBC and E&Y jointly and secretly developed E&Y's testing approach, which has a number of substantive and procedural flaws. Ironically, even with these flaws in E&Y's approach, E&Y's test has also found significant problems that remain uncorrected today.

1. BearingPoint's Test Is Incomplete And Reveals Massive Problems With SBC's Performance Measures.

BearingPoint was retained in 2000 to conduct a test of, *inter alia*, SBC's performance reporting.²⁴ This testing, however, has been subject to delays and problems as a result of SBC's changes to its data systems and the inadequacies of its performance measures. BearingPoint originally had planned to review SBC's reported data for April 2001, but problems with SBC's performance measurement system practices, procedures, and documentation led to a delay. BearingPoint and SBC then targeted SBC's October 2001 data, but again problems with SBC's systems and practices made that timetable impossible. Efforts were made to use SBC's reported January, February, and March 2002 data, but these plans eventually had to be abandoned due to problems reproducing SBC's data. Then, on its fourth try, BearingPoint was able to conduct a

²⁴ BearingPoint undertook three tests: a Performance Metrics Reviews ("PMR"); a Policies and Procedures Reviews ("PPR"); and Transaction Validation and Verification ("TVV"). The PMR test is designed to assess "the systems, processes, and other operational elements associated with Ameritech's support for Performance Metrics." The PMR portion of the OSS test assesses five areas: PMR1 – Data Collection and Storage Verification and Validation Review; PMR2 – Metrics Definitions and Standards Development and Documentation Verification and Validation Review; PMR3 – Metrics Change Management Verification and Validation Review; PMR4 – Metrics Data Integrity Verification and Validation Review; and PMR5 – Metrics Calculation and Reporting Verification and Validation Review. Moore/Connolly Decl. ¶ 42.

test of SBC's July, August, and September 2002 data.²⁵ BearingPoint produced an interim report dated September 23, 2002 but has continued to work on exceptions and outstanding issues. Given the problems with SBC's data and systems, BearingPoint has yet to conclude its testing and is not scheduled to complete its work until May of 2003 at the earliest. Michigan Report at 7; Moore/Connolly Decl. ¶¶ 40-43. Several portions of the test, including the "data integrity (PMR4) and metrics calculations (PMR5) tests are, for the most part, incomplete at the moment [and m]any observations and a few exceptions remain open or unsatisfied for these tests." Michigan Report at 21.

At the time BearingPoint issued its October 30, 2002 report, "[n]early half of the applicable BearingPoint testing criteria for . . . [the metrics] test remained in a 'Not Satisfied' [136 test points] status and determinations on another 40% of the criteria [108 test points] were as yet undetermined." Michigan Report at 7. As described below and in greater detail in the Moore/Connolly Declaration, the metrics portion of the test remains incomplete, and SBC's performance monitoring and reporting systems remain riddled with errors. Moore/Connolly Decl. ¶ 50.

Much of the responsibility for BearingPoint's inability to resolve outstanding issues rests with SBC, which has continually delayed discussion and resolution of them. Although Observation and Exception status calls are held every two weeks, SBC has continually deferred discussion of open observations and exceptions, as reflected in the Open Observation Status Report. Moore/Connolly Decl. ¶ 51.

A brief review of BearingPoint's findings to date demonstrates that SBC's performance data are not reliable, accurate, meaningful, or reproducible.

²⁵ By contrast, E&Y reviewed SBC's March, April, and May 2000 data.

a. Documentation Of Technical Requirements And Processes.

In testing the adequacy and completeness of SBC's policy of collecting and storing data, BearingPoint determined that SBC failed 72 of 126 test criteria; the remaining 54 test criteria were found to be "Indeterminate." Moore/Connelly Decl. ¶ 54-55. SBC claims that it has provided additional documentation that will allow BearingPoint to satisfy all the outstanding test items. Ehr Aff. ¶ 249. This review, however, will not be completed until the end of the second quarter 2003, and is simply a paper promise entitled to no weight. Moore/Connolly Decl. ¶ 56.

Moreover, SBC has now changed the data flows for certain measurement groups, including a change from the MOR/Tel system to the ICS/DSS system, which will affect all ordering measures. As a result, changes have been made to data flows for performance measures relating to billing, miscellaneous administration, interconnection trunking, directory assistance/operator services, 911, NXX, facilities notification, and other measures. There is no evidence that the data produced in connection with these new flows will be accurate or reliable. In light of the problems that have occurred when SBC introduces new systems (e.g., the migration from LSOG 4 to LSOG 5), there can be no assurance that the accuracy and reliability of the ordering data under the ICS/DDS system will not be affected. Accordingly, SBC has no valid evidentiary basis for asserting that the submitted documentation will resolve all outstanding issues until BearingPoint completes its review in the second quarter of 2003. Moore/Connelly Decl. ¶¶ 57-58.

b. Data Controls And Restatements.

SBC's data restatements alone demonstrate that its performance measure data are not reliable, accurate, meaningful and reproducible. On this point, BearingPoint determined that "[t]he metrics data processing procedures do not include adequate controls and edits to ensure

accurate metrics calculation and reporting.”²⁶ Exception 20 documented the problem: SBC “continuously restates results as a normal course of business,” and problems with SBC’s controls, documentation, and procedures are “resulting in inaccurate performance metric reporting which requires frequent restatements of posted performance measurement results.”²⁷ Moore/Connolly Decl. ¶¶ 59-64.

During the period May to December 2002, SBC restated performance results for 907 performance measures. A number of performance measures were restated several times, resulting in a total of 1623 restatements for the period. Moore/Connolly Decl. ¶¶ 65-68. There were many root causes for these restatements, including software coding errors, inconsistencies or errors in processing logic, internal performance measurement system processing problems, misinterpretations of application logic, data entry errors, calculation errors, improper classification of orders, improper application of business rules, incorrect settings of indicators in the performance measure systems, and improper inclusions and exclusions of data.²⁸ Taken together, these various problem areas are overwhelming evidence that SBC’s performance measure systems are not stable and reliable, and the constant changes to the performance data demonstrate that the data are not accurate, meaningful or reproducible. Moore/Connolly Decl. ¶¶ 69-70.

c. Data Retention.

On data retention, after months of investigation BearingPoint issued Exception 19 regarding discrepancies in various source documents. SBC claims to have corrected these

²⁶ BearingPoint Michigan Report, PMR1-4-A at 227.

²⁷ BearingPoint Exception 20, dated Nov. 30, 2001, at 2-3.

²⁸ Many of these problems were cited by DOJ as reasons for concern about the Georgia/Louisiana performance measures in Case No. 01-277. *See* p. 35 *supra*.

problems and submitted additional documentation to BearingPoint, Ehr Aff. ¶ 254, but BearingPoint has continued to find discrepancies in various source systems even after submission of the supplemental material. There continue to be discrepancies between the systems of records identified by SBC and the source systems listed in SBC's documentation. These discrepancies have adversely affected OSS functions, as well as local number portability and the directory assistance database. Moore/Connolly Decl. ¶¶ 71-72.

d. Performance Measure Change Management.

BearingPoint reviewed SBC's policies for managing changes to metrics and for communicating those changes to the Michigan PSC and CLECs. BearingPoint determined that SBC had failed to identify changes to its metrics change management process or to notify all relevant parties of changes to the metrics business rules on a timely basis (Exceptions 41 and 157). Moreover, there were no formal communication channels between SBC personnel responsible for OSS change management and SBC personnel working on metrics change management. As a result, changes in OSS might not be reflected in appropriate changes to the performance measures. BearingPoint also determined that SBC did not have the adequate processes in place to test changes made to the metrics programs, processes, and systems (Exception 133). BearingPoint concluded that such deficiencies called into question the accuracy of SBC's performance data "as presently reported," and "may negatively affect [SBC's] ability to implement changes to these performance measurements in the future."²⁹ Moore/Connolly Decl. ¶¶ 74-77.

e. Metrics Data Integrity Verification (PMR4).

²⁹ BearingPoint Exception 133, dated July 1, 2002. BearingPoint also found that SBC did not update its Metrics Business Rules on a timely basis. Moore/Connolly Decl. ¶ 77.

BearingPoint tested the policies and practices for processing data used by SBC in the production of its reported performance metrics and standards. BearingPoint has been unable to complete testing in this area and has 9 open exceptions and 12 open observations. BearingPoint's inability to complete this testing is itself evidence that SBC's performance measures are not reliable.

The open exceptions and observations relate to a variety of issues that underscore the unreliability of SBC's data. Moore/Connelly Decl. ¶¶ 78-90. These issues include:

- 頻 Missing DUF records used in calculating the timeliness of the DUF feed under Performance Measure 19 (Exception 19); SBC conceded that it does not include those DUF records in calculating Performance Measure 19;
- 頻 SBC's inability to match associated E911 database records, with the result that SBC is reporting in its results orders that are not included in its source systems (Exception 181);
- 頻 Use of incorrect data to calculate premature disconnects on coordinated cutovers, with SBC implementing the metric in a manner inconsistent with its business rules (Exception 175);
- 頻 Missing interface outage notification data in calculation of Performance Measure MI 11 (Average Interface Outage Notification); SBC has not responded to this exception and is uncertain about the impact of the problem on reported results.
- 頻

Given the significant number of open exceptions, observations, and test points that have not been resolved, SBC cannot plausibly claim that its data are reliable. Moore/Connolly Decl. ¶¶ 78-90.

f. Metrics Calculation Of Reporting (PMR 5).

BearingPoint also tested the consistency between SBC's metrics business rules and the procedures used by SBC to calculate metrics to determine whether it could replicate SBC's data and whether SBC's implemented the measures in a manner consistent with the business rules. BearingPoint also has yet to complete this test and has one open exception and one exception

closed as “Not Satisfied,” as well as 76 open observations. These 76 open observations demonstrate that BearingPoint has been unable to replicate SBC’s data affecting scores of performance measures, and the ongoing nature of SBC’s performance data problems is illustrated by BearingPoint’s opening of three observations on January 30, 2003.³⁰ Moore/Connolly Dec ¶¶ 91, 97-99.

In addition to findings that SBC’s data cannot be replicated, BearingPoint’s PMR5 testing has revealed problems with SBC’s implementation of the performance measures. Indeed, open Exception 111 demonstrates how SBC can “game” the performance measure data process. BearingPoint opened Exception 111 after it determined that SBC had manipulated the timeliness measures for UNE-loop repairs to make it appear that the wholesale repair times were relatively shorter than retail repair times, “which internally affects underlying data for PM 66-68.”³¹ . Moore/Connolly Decl. at ¶¶ 92-96. As a result of SBC’s “gaming” the process, parties cannot trust the accuracy or validity of these Performance Measures.

Given these ongoing problems identified by BearingPoint, as well as the unfinished work that BearingPoint has yet to perform, SBC cannot claim that its performance data are reliable, accurate, or replicable.

2. SBC Cannot Rely On E&Y’s Limited Testing To Support The Reliability Of Its Performance Data.

Unhappy with the extensive problems that BearingPoint discovered in SBC’s performance measures, SBC unilaterally retained E&Y to perform a separate test of SBC’s

³⁰ These three observations related to BearingPoint’s inability to replicate SBC’s posted results for August and September 2002 for Performance Measure 105 (Percentage of Requests Processed Within 35 Days) and 106 (Average Days Required to Process a Request) and for September 2002 for Performance Measure MI 5 (Structure Requests Completed Outside Interval). Moore/Connolly Decl. ¶ 98.

³¹ BearingPoint Exceptions 111 Version 2, Disposition, dated May 23, 2002 at 4.

performance measures and control systems. SBC's retention of E&Y represents an attempt to divert regulatory attention from the significant problems that BearingPoint identified in the two years that it had been examining SBC's inadequate performance measure data and systems prior to SBC's unilateral retention of E&Y. E&Y's purported "independence" is suspect, because E&Y serves as SBC's financial statement auditor and was hired for this engagement by SBC. In addition, the test plan used by E&Y was developed in private by SBC and E&Y and was not subject to the public review and comment that accompanied the development of BearingPoint's Master Test Plan. E&Y's test plan features a limited scope of work with special exceptions and convenient exclusions that have allowed E&Y to gloss over many serious performance data deficiencies found by BearingPoint. With its specially developed narrow-gauge test, SBC's plan clearly was to replace BearingPoint's rigorous study with E&Y's friendly approach. Moore/Connolly Decl. ¶¶ 44-50.

That is what has happened, and SBC relies heavily on the E&Y findings in support of its Section 271 application. E&Y's findings, however, do not undercut the massive problems found by BearingPoint with SBC's performance measures and do not support a finding that SBC's performance measures are reliable, meaningful, accurate, and reproducible. Although the design of the E&Y test was far more limited, the E&Y results in many ways confirm the performance data problems found by BearingPoint.

a. The E&Y Test Procedures Were Flawed.

SBC's reliance on results of the E&Y test is misplaced because the scope of E&Y testing procedures was limited, and the tests did not examine crucial areas. Unlike BearingPoint, E&Y assumed that the underlying raw data provided by SBC was accurate and then simply tested whether this data flowed to the performance metrics in accordance with the appropriate business

rules. Moore/Connolly Decl ¶ 103. As discussed above, however, BearingPoint determined in many instances that SBC's raw data were unreliable and often could not be verified or replicated. For this reason, E&Y's reliance on the accuracy of the SBC's data undercuts the validity of many of E&Y's results. *Id.*

The E&Y test also had a narrower scope than the BearingPoint test and did not examine all the areas tested by BearingPoint. In addition, E&Y limited its identification of data discrepancies to what it unilaterally defined as "material" exceptions, which gave E&Y discretion to overlook problems that BearingPoint identified as significant, such as instances in which SBC improperly implemented business rules governing the performance measures. As a result, significant errors that did not qualify as "material" under E&Y's definition were not identified or addressed. Moore/Connolly Decl. ¶¶ 104-06. This introduced a level of subjectivity into the testing that again undercuts the scope and validity of E&Y's conclusions.³²

E&Y also used a regionwide approach to testing, in contrast to BearingPoint which focused exclusively on Michigan, and it did not employ a "Pseudo-CLEC" for submitting CLEC orders. Many problems with SBC's performance measures were first identified as a result of the submission of pseudo-CLEC orders by BearingPoint, and E&Y's failure to use such orders again demonstrated the limited nature of its review of SBC's performance data systems and processes. Moore/Connolly Decl. ¶ 107.³³

³² Along the same lines, E&Y conducted "analytical reviews" of "volumes, fluctuations in results and reasons for parity or out-of-parity results for the period under examination" (E&Y October 18, 2002 Supplemental Report at 6) that were little more than subjective interviews. The "analytical reviews" consisted solely of interviews with SBC personnel in which E&Y listened to the explanations by SBC personnel and determined whether those explanations were "reasonable." No other testing was performed, and according to E&Y's workpapers, SBC's explanations were accepted at face value with no verification of SBC's explanations. Moore/Connolly Decl. ¶¶ 108-110.

³³ It also appears that E&Y did not conduct performance measurement code reviews of systems other than the Business Rules System. Moore/Connolly Decl. ¶ 111. E&Y similarly failed to perform necessary site

Finally, E&Y accepted SBC's erroneous applications of business rules without challenge and did not review whether SBC's interpretations were consistent with the governing business rules for various performance measurement metrics. Moore/Connelly Decl. ¶¶ 116-20. BearingPoint opened 14 observations covering 20 different performance measures because of SBC's failure to comply with the business rules governing the metrics. E&Y's conclusion that SBC's data were fully compliant is thus tainted by E&Y's uncritical acceptance of SBC's interpretation of its business rules. This is another major flaw in E&Y's testing approach that further undercuts the validity of its findings. *Id.*

In addition to these significant limitations in E&Y's test approach, it also appears that E&Y's results in its data integrity testing may be based on outdated source systems. As discussed above, SBC has modified several of its performance reporting systems, most notably by broadening the scope of its ICS/DSS system. BearingPoint is currently testing to determine whether these system changes have affected the integrity of SBC's data. If BearingPoint determines that the systems of records have changed for certain sets of measures (e.g., pre-ordering, ordering), then many of the prior Performance Measure Review findings may be invalid. In that case, E&Y's conclusions will no longer be valid due to the changes in performance reporting systems. Moore/Connolly Decl. ¶¶ 112-15.

b. E&Y's Testing Revealed Significant Problems with SBC's Performance Data.

Even putting aside the serious problems with E&Y's testing approach, E&Y's test revealed significant problems with SBC's performance data. SBC claims that it has largely corrected the many reported problems, Ehr Aff. ¶ 217, but that claim is incorrect, as literally

visits, process reviews, performance measurement code reviews, and transaction testing in confirming that SBC had taken corrective actions to address and resolve the many data deficiencies identified by

scores of performance measures have not been corrected. Moore/Connolly Decl. ¶ 132-45. Indeed, errors remain in many performance measures included in SBC's application. *Id.*

As examples of problems found by E&Y, SBC erroneously excluded weekends and holidays from calculation of certain performance measures in violation of the Business Rules, and excluded wholesale transactions from ordering measures when the field identifying the CLEC was blank. Moore/Connolly Decl. ¶¶ 138-39. In addition, E&Y found that SBC was not properly recording the actual start time for Performance Measure 114 (Percentage of Premature Disconnects/Coordinated Customers) and 115 (Percentage of Ameritech Caused Delayed Coordinated Cutovers.) In its December 19, 2002 report, E&Y stated that SBC had implemented an alternative method for capturing the start times for coordinated cutovers, beginning with the September 2002 results. SBC's methodology, however, is not consistent with the business rules governing these measures – a deficiency captured in BearingPoint's Exception 175 but not noticed by E&Y. E&Y's failure to detect this problem illustrates the difference between the scope and thoroughness of the BearingPoint and E&Y testing. *Id.* Decl. ¶ 135.

In short, neither the BearingPoint nor the E&Y tests establish that SBC's performance measures are reliable or accurate. Instead, they validate the Michigan PSC's contrary conclusion. The test findings thus confirm that SBC has not yet demonstrated full implementation of its checklist obligations.

D. SBC's Inability to Provide Accurate Raw Performance Data Is Further Evidence of the Unreliability of Such Data.

Further undercutting SBC's claim that its performance data are reliable is its inability to provide requested raw data to CLECs. This Commission has stated that "the availability of raw

E&Y in its reports. Moore/Connolly Decl. ¶¶ 121-31.

performance data” is relevant in determining the reliability of performance data.

Georgia/Louisiana 271 ¶ 19. AT&T has two concerns in this area. First, obtaining raw performance data is cumbersome in the former Ameritech region in comparison to the other SBC territories. Second, despite repeated efforts, SBC has been unable to provide raw performance data upon request.

The former Ameritech region has not implemented the web-based raw data request process that SBC has made available in Texas and California for the past several years. This web-based process allows a CLEC to request all its raw data for a given month. AT&T has requested that SBC offer this capability in the former Ameritech region, but SBC has refused to make it available. As a result, AT&T and CLECs must use a more cumbersome process involving separate and individual raw data requests to SBC. *Moore/Connolly Decl.* ¶ 147.

SBC also has not been able to provide raw data upon individual request. Several weeks ago, AT&T sought the raw performance data from SBC for September, October, and November 2002 on Performance Measure 39 (Receipt to Clear Duration) , which measures how long it takes SBC to clear CLEC trouble tickets for UNE-P service, in order to review SBC’s handling and disposition of AT&T trouble tickets. SBC provided a file on January 22, 2003 in which 9186 trouble tickets, or 64% of the total trouble tickets used to calculate the performance measure, were excluded from the performance data calculations. The file failed to provide the disposition codes for the trouble tickets, and thus, AT&T could not review the bases listed on the trouble tickets for exclusion from the performance data. A follow-up request produced a second file from SBC on January 30, which did not contain the excluded trouble tickets. A third request was made, and that file was provided on February 3, but that file included only approximately

19,000 trouble tickets, 9000 less than the original file. For the February 3 file, 49% of trouble tickets were excluded from the performance data calculations. Moore/Connolly Decl. ¶ 148.

The results of this exercise? Over the course of two weeks, SBC has produced three separate raw data files, all with different numbers of trouble tickets and all inaccurate in some significant manner. The number of trouble tickets for the three month period is now set, and SBC should be able to provide accurate raw data on trouble tickets relating to one performance measure. Its inability to do so in three separate attempts is yet more evidence that its performance data are not stable or reliable. Moore/Connolly Decl. ¶ 149.

III. SBC DOES NOT PROVIDE NONDISCRIMINATORY ACCESS TO ALL OF THE NETWORK ELEMENTS, INCLUDING UNBUNDLED SWITCHING, NEEDED TO PROVISION LINE-SPLITTING ORDERS.

AT&T and Covad have entered into a line-splitting arrangement whereby AT&T provides voice service and Covad offers DSL service to AT&T UNE-P customers. As part of that arrangement, AT&T has authorized Covad to submit DSL orders to SBC for existing AT&T voice customers. DeYoung/Connolly Decl. ¶ 3. Even though this Commission required ILECs to provide this line splitting capability to CLECs in its *Line Sharing Reconsideration Order* two years ago, it appears that SBC is not currently able to provision such line splitting orders. SBC must be able to provision such orders before it can be found in full compliance with Section 271.

Moreover, as discussed below, SBC's process for removing data service from a line that has been in a line splitting arrangement requires submission of three separate orders and will result in significant customer outages (up to 7 days) and possible facilities shortages. Thus, leaving aside provisioning obstacles, SBC's own processes and procedures for line splitting demonstrate its failure to provide nondiscriminatory access to switching and loops.

1. SBC Is Obligated to Provide Line Splitting Capabilities to AT&T and Covad.

In the *Line Sharing Reconsideration Order*, the Commission ruled that ILECs must “permit competing carriers providing voice service using the UNE-platform to either self-provision necessary equipment or partner with a competitive digital carrier to provide xDSL service on the same line.” *Id.* ¶ 16. The Commission urged ILECs to work with state commissions and CLECs to develop processes and systems to allow line splitting, including “developing a single-order process for competing carriers to add xDSL service to UNE-platform voice customers.” *Id.* ¶. 21. The Commission based these rulings on its finding that line splitting would increase customer choices by allowing carriers to compete for both voice and data services and would allow voice carriers that do not want to provide xDSL service to combine with data carriers and offer combined voice and data services to customers. Line splitting would also advance competition for advanced services and was an especially attractive offering for residential and small business customers. *Id.* ¶ 23.

As the Commission’s decision makes clear, line splitting is important to the development of competitive markets for voice and advanced services. AT&T and Covad have elected to offer voice and data services in a partnership that will allow customers to receive the services on a packaged basis. In offering these services on a packaged basis, AT&T and Covad are seeking to increase competitive choices for Michigan consumers for these popular packages.

2. SBC Has Not Developed the Processes to Provision Line Splitting Orders.

SBC, however, has not established the processes for handling line splitting orders as required by the Commission in the *Line Sharing Reconsideration Order*. In a series of orders beginning in December 2001, the Michigan Public Service Commission found that SBC’s line splitting processes were inadequate and ordered SBC to work with CLECs to develop

appropriate processes for provisioning line splitting orders.³⁴ As part of those proceedings, SBC and other parties began by identifying four scenarios for study, and SBC developed processes for handling orders for those four processes. One of those scenarios was described by the Michigan Commission as follows: “The end user currently obtains voice service from a voice CLEC and seeks to add data services from a data CLEC that may or may not be affiliated with the ILEC.”³⁵ In an October 3, 2002 order, the Michigan PSC again determined that the processes established by SBC for those four scenarios were not adequate for handling line splitting orders.³⁶ The Commission ordered SBC to make a compliance filing which, while providing additional details regarding the four scenarios, failed to include detailed OSS processes for handling line splitting orders. DeYoung/Connolly Decl. ¶ 7.

In addition, the testing by Bearing Point does not provide reliable evidence of SBC’s ability to handle line splitting orders. Recent statements in Illinois proceedings make it clear that BearingPoint did not submit line splitting orders in Michigan but instead relied on observations of other CLEC’s ordering activities. Because it is unlikely that CLECs were ordering line splitting at the time of the BearingPoint test, there were likely no such orders to observe. BearingPoint has stated that it believed that line sharing orders worked in the same manner as line splitting orders, and it may well be that BearingPoint tested only line sharing orders. DeYoung/Connolly Decl. ¶¶ 8-9.

Even if line splitting orders were tested, BearingPoint’s review did not test line splitting processes on an end-to-end basis, and the modifications adopted by SBC after the October 3,

³⁴ December 2001 Order at 6-12.

³⁵ Opinion and Order, *In the Matter, on the Commission’s Own Motion, to Consider Ameritech Michigan’s Compliance with the Competitive Checklist in Section 271 of the Federal Telecommunications Act of 1996*, Case No. U-12320, at 23 (10/3/02) (“October 2002 Order”).

³⁶ October 2002 Order at 14-15.

2002 were not tested by BearingPoint. Accordingly, the BearingPoint testing cannot serve as the basis for a claim that the line splitting processes are commercially available. Nor are there commercial volumes of line splitting orders with which SBC could demonstrate the readiness of its OSS to process line splitting orders. DeYoung/Connolly Decl. ¶ 10-12.

Moreover, discussions with SBC regarding the proposed AT&T/Covad line splitting orders have raised further concerns about SBC's ability to provision such orders. One problem is SBC's refusal to modify its "versioning" requirement. As discussed above and more fully in the DeYoung/Willard OSS declaration (at ¶¶ 136-57), under this "versioning" policy, once a carrier submits an order with its specified ACNA and OCN, all subsequent orders submitted by that OCN must be sent in the same version of EDI used to place the first order. Any order submitted using a different version of EDI is rejected. In this case, Covad is using AT&T's OCN to submit line splitting orders, and any Covad orders placed over the EDI gateway will be rejected if Covad does not use the same EDI version as AT&T. Currently, AT&T and Covad use different EDI versions, and as a result, Covad's orders will be rejected. DeYoung/Connolly Decl. ¶¶ 13-15.

SBC's improper versioning policy prevents AT&T from partnering effectively with *any* DLEC. It will never be possible to ensure that AT&T and any possible DLEC partner are always on the same EDI version. These versioning restrictions affect not only AT&T but also DLECs, who will similarly be prevented from offering line splitting in partnership with any CLEC.³⁷

SBC's versioning policy makes it impossible as a practical matter to offer line splitting, which is

³⁷ SBC's versioning policy is not a barrier to line sharing by SBC with DLECs, and a DLEC does not have to use the same EDI version as SBC to engage in line sharing. DeYoung/Connolly Decl. ¶ 17. There is no reason that CLECs and DLECs should be subject to versioning requirements for line splitting when the same rules do not apply to SBC in providing the similar line sharing functionality. Line splitting is a form of line sharing and may appropriately be subject to the same rules. *See Line Sharing Reconsideration Order* ¶¶ 14-26 (considering line splitting as subset of larger line sharing issue).

directly contrary to the Commission's explicit approval of such capability in the *Line Sharing Reconsideration Order*. DeYoung/Connolly Decl. ¶¶ 15-16.

SBC has also taken the position in discussions with AT&T that it will not accept any line splitting orders that require any changes to its OSS. Such a position is inconsistent with this Commission's requirement that ILECs make network modifications and provide access to network elements to accommodate line splitting. *Line Sharing Reconsideration Order*, ¶ 20 & n. 36.³⁸ DeYoung/Connolly Decl. ¶ 18.

AT&T remains concerned that the "versioning" issue and other operational and OSS problems will prevent SBC from being able to provision AT&T/Covad line splitting orders in a timely and accurate manner. To comply with its obligations under Section 271, two years after the *Line Sharing Reconsideration Order*, SBC must demonstrate that it can provide line splitting on a commercially reasonable basis. DeYoung/Connolly Decl. ¶ 19.

3. Certain SBC Line Splitting Processes Violate SBC's Obligation to Provide Nondiscriminatory Access to Switching.

SBC has also proposed processes for handling line splitting orders that are clearly deficient and violate the Act's requirement of nondiscriminatory access to switching and loops. SBC states that any time an AT&T voice/DSL customer elects to drop the DSL service, AT&T must submit three orders (one to disconnect the unbundled DSL loop, one to disconnect the unbundled switch port, and one to order a new loop and port combination). SBC's processes specify that a CLEC voice/DSL customer that drops only the DSL service will lose voice service for up to seven days while the loop is removed from the DLEC's DSLAM and risks the possibility of facilities shortages that would prevent the customer from being able to be

³⁸ Indeed, recent new stories have highlighted concerns by SBC and other ILEC officials about their ability to provision and offer line splitting. *See, e.g.*, "New Phone Twist: Switch Local Service and Lose

reconnected altogether. The CLEC's only alternative is to leave the loop in the DLEC cage, but leaving the loop would tie up a port on the DLEC DSLAM that would no longer be available to provide data services, which imposes significant costs on the line splitting parties. DeYoung/Connolly Decl. ¶¶ 20-21.

SBC does not face a similar choice between incurring added costs or having the SBC customer face any form of outage. Indeed, when SBC is the voice provider and Covad provides data services, if the customer terminates Covad's service, then SBC removes the loop from Covad's collocation cage and returns the loop to SBC's switch, with no appreciable interruption in the customer's voice service. There is no 7-day outage or other significant interruption in the service, even though SBC is physically moving the loop back from Covad's collocation space to SBC's switch. Also, there is no evidence that when an SBC customer drops DSL service, that customer suffers any outage of voice service whatsoever. Similarly, there is also no evidence that SBC accomplishes this result by tying up the data port that SBC previously used to provide the customer with data service. SBC thus imposes costs on CLECs to continue providing voice service through unbundled local switching and loops for their former DSL customers that SBC does not incur. This disparate treatment of similarly situated CLEC and SBC customers is discriminatory and deprives the CLEC nondiscriminatory access to the SBC switch and loop. *Id.*

IV. APPROVAL OF SBC'S MICHIGAN 271 APPLICATION AT THIS TIME WOULD NOT SERVE THE PUBLIC INTEREST.

Finally, SBC fails to demonstrate that approval of its 271 application for Michigan is in the public interest. SBC rests its argument on two points. First, SBC argues that approval now "will stimulate both long-distance and local competition." SBC Br. 91. Second, SBC claims

Your DSL," *Wall St. Journal*, Jan. 30, 2003, at B1 ("Few people understand the complexity of doing two services over a single line." (quoting Zeke Robertson, senior vice president of SBC's DSL division)).

that Michigan Bell is subject to a “comprehensive remedy plan” that will prevent backsliding and foster post-entry checklist compliance. SBC Br. 98. Each claim is demonstrably incorrect.

A. Premature 271 Approval Will Serve Only To Stifle Local Competition.

SBC’s principal argument for immediate approval of its Michigan 271 application is that “BOC 271 entry is a catalyst for increased competition in all segments of the communications marketplace – long distance, local, and advanced services.” SBC Br. 97. Notwithstanding the purported authorities that SBC cites, there is no evidence that this is true. Indeed, the undisputed facts of competition in SBC’s region alone – including in Michigan – unquestionably refute it.

The truth – and no RBOC knows this better than SBC – is that premature 271 authorization is not a magnet for CLEC entry, but simply one more barrier to it. SBC received 271 authorization for Arkansas and Missouri over one year ago (on November 16, 2001), and for Kansas and Oklahoma a full two years ago (on January 21, 2001). Yet SBC today faces no local residential competition from AT&T in any of those states. The reason is that AT&T cannot compete with SBC in states that have failed to set cost-based UNE rates, regardless of whether this Commission has granted SBC 271 relief in those states. AT&T, of course, does not like to lose customers to SBC solely because SBC is the only competitor that can offer customers a bundled package of local and long distance services (to say nothing of DSL). But if AT&T will lose money providing local service to customers, even the certain loss of long distance customers will not justify local entry.

Conversely, AT&T will enter states – such as Michigan – that do set cost-based rates, and will do so regardless of whether 271 entry is imminent. As SBC does and must concede (SBC Br. 95 & n.100), AT&T entered the Michigan market on February 13, 2002. AT&T’s Michigan entry thus occurred long before any federal 271 approval was imminent, and nearly a full year

before SBC even filed its application with this Commission. AT&T entered the local market in Michigan not to fend off the imminent loss of long distance customers, but because the Michigan PSC set cost-based UNE rates.

There is thus absolutely no factual basis for SBC's claim that approval of its Michigan 271 application will "stimulate" local competition from long distance providers in Michigan. It will not. Such competition arrived long ago, and has been as vigorous as SBC's flawed OSS systems have permitted it to be. Approval of SBC's Michigan 271 application therefore will not stimulate local competition in Michigan.

Premature approval of this Michigan 271 application, however, will stifle local competition. The three key factors constraining full, fair, and sustainable local voice competition in Michigan's residential markets are (1) the inadequacy and instability of Michigan Bell's OSS systems, (2) the unreliability of Michigan Bell's data reporting, and (3) the ineffectiveness of Michigan Bell's performance remedy plan to correct the first two problems. SBC's discrimination with respect to line-splitting stands as a further obstacle to competition for both local residential voice and advanced services. The only meaningful incentive that SBC has, at this point, to correct these core obstacles to local competition is the need to satisfy this Commission that SBC has fully implemented its checklist obligations and that approval of its application is otherwise in the public interest. Once this Commission gives SBC the "green light" of long-distance authorization in Michigan, all hope of reasonable and prompt cooperation from SBC in Michigan (and the remaining Ameritech-region states) on these issues will evaporate, and the growth of local competition will, at best, be indefinitely stalled.

Conversely, requiring SBC to fix the problems that obstruct local entry – even if it means a delay in long distance authorization – will have no significant impact on long distance

competition. Once again, the record of SBC's long-distance entry to date bears this out. In California, SBC entered the long distance market at the end of December, 2002, and recently reported that within 19 business days (or about 4 weeks time) it had captured 2.5 percent of the available retail voice access lines in California,³⁹ which (in light of SBC's estimates of total retail voice access lines in its California serving area) works out to be about 502,800 lines.⁴⁰ SBC has thus amassed a percentage of the California market in only four weeks that is nearly as large as the percentage of the Michigan local residential market that AT&T obtained in four months. That performance shows both that SBC faces no OSS-related hurdles in obtaining long distance customers, and that there is no lag to SBC's long-distance entry.

The record of long distance and local entry in Texas is more telling still. Having received 271 authorization in Texas in June 2000, SBC has steadfastly and so far successfully resisted the efforts of CLECs to have the Texas Public Utilities Commission lower SBC's excessive UNE prices. As a result, more than three years after AT&T initially entered the local market in Texas, AT&T has been able to garner only a small percentage of the residential access lines in Texas. SBC, by contrast, states in its application that it acquired 2.1 million long distance customers in Texas alone in the first nine months after 271 authorization (Br. 92), and confirms in its recent investors' report that its share of the long distance market in Texas is now approaching 40 percent.⁴¹ The Texas experience thus confirms that if the conditions for robust local competition are not in place at the time 271 entry is authorized, the applicant BOC will quickly leverage its

³⁹ See SBC Investors Update, 4th Quarter 2002, at 14 (attached hereto as Exhibit 1).

⁴⁰ Based on SBC's estimate of 20,112,000 retail voice access lines in SBC's service area in California as of July 2002. See Declaration of J. Gary Smith in support of Application by SBC Communs. Inc. et al. for provision of In-Region, InterLATA Service in California, WC Docket No. 01-306.

⁴¹ SBC Investors Update, 4th Quarter 2002, at 14 (attached hereto as Exhibit 1).

local monopoly into enormous long distance market share, while local competition withers on the vine.

B. Michigan Bell's Performance Remedy Plan Neither Fosters Compliance With The Act Nor Prevents Backsliding.

SBC is also wrong to suggest that the presence of Michigan Bell's performance remedy plan will compel SBC to make the OSS-related changes in the future that it has so far refused to make to date. Common-sense alone refutes the argument. SBC has not only been subject to the strictures of the remedy plan for months now, but has had the additional and far more powerful incentive of demonstrating full implementation of its checklist obligations. Notwithstanding that incentive, SBC has refused – or been unable -- to stabilize its OSS, comply with its change management obligations, collect and report accurate performance data, provide nondiscriminatory support for line-splitting, or address the numerous other defects discussed above. Given that, there is no factual basis for thinking that SBC will suddenly cooperate and support competitive entry just as the fear of rejection of its 271 application is removed.

SBC has shown no compunction whatsoever about violating the clear and unequivocal orders of the Michigan PSC whenever that suits SBC's anticompetitive purposes. Thus, this Commission was compelled, just 4 months ago, to fine SBC a record \$6 million for repeatedly violating the orders of the Michigan PSC and this Commission to provide shared transport for intraLATA toll service. This followed a fine, affirmed by the Michigan court of appeals, of \$3,750,000 for refusing to provide unbundled local transport. Beyond that, SBC's cumulative penalties for performance measure and other local competition-related noncompliance in

Michigan for 2002 alone amount to \$7,790,319.⁴² There is thus real reason – millions of dollars worth – to doubt that the Michigan PSC alone has the capability to prevent SBC from acting anticompetitively once this Commission authorizes 271 relief.

Given SBC’s unmatched record of treating massive penalties as the mere cost-of-obstructing CLECs’ business, it would be naïve to think that even a comprehensive performance monitoring system and penalty plan alone would prevent future discrimination, let alone compel SBC to make changes tomorrow that it is allowed to ignore in gaining 271 approval today. The demonstrated ineffectiveness of the penalty plan in deterring SBC’s anticompetitive conduct and the unreliability of SBC’s performance reporting foreclose any such finding today.

Indeed, the Michigan PSC itself has concluded that SBC’s performance reporting lacks the “stability and dependability” that is required for it to serve its intended purpose of “monitoring” and providing “assurances against discriminatory behavior.” This is an admission – inescapable on this record – that the principal regulatory tools available to the Michigan PSC are not sufficiently developed to permit it to ensure SBC’s post-approval compliance with the Act. This application therefore lacks a critical element present in all previously approved applications – the assurance of the state commission that the performance remedy plan and proven accuracy of the applicant BOC’s self-reporting will ensure future compliance with the Act.

Accordingly, neither of the reasons advanced by SBC in an effort to demonstrate that its application will serve the public interest has merit. For this reason as well, the Commission should deny this application.

⁴² The total includes fines of \$389,652, \$293,136, \$774,11, \$1,730,000, \$492,066, \$699,239, \$174,055, and \$323,800, which were levied throughout calendar year 2002 for failure to meet wholesale

CONCLUSION

For the reasons stated above, SBC's 271 application for Michigan should be denied.

Respectfully submitted,

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performance requirements in Michigan.

CERTIFICATE OF SERVICE

I hereby certify that on this 6th day of February, 2003, I caused true and correct copies of the forgoing Comments of AT&T Corp. to be served on all parties by mailing, postage prepaid to their addresses listed on the attached service list.

Dated: February 6, 2003
Washington, D.C.

/s/ Peter M. Andros

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* Filed electronically via ECFS